



California State Board of Education Policy

POLICY #
99-05
DATE
September 1999

WAIVER GUIDELINES

Apportionment Significant Audit Exceptions (Retroactive Waivers)

REFERENCES

Education Code Section 41344.

HISTORICAL NOTES

None.

Assembly Bill 1115 (Chapter 78, Statutes of 1999) added Section 41344 to the *Education Code*. This section establishes procedures for the repayment of audit exceptions by local educational agencies (LEAs) and includes a provision for multiple-year repayment plans and a process to appeal any errors of fact.

The State Board of Education finds that it would be inconsistent with *Education Code* Section 41344 (the latest expression of legislative intent regarding the repayment of audit exceptions) to consider under *Education Code* Section 33050 et seq. (the general waiver authority) any request to waive retroactively any statute or regulation that is the basis of an apportionment significant audit exception.

The State Board of Education also finds that *Education Code* Section 46206 authorizes the State Board, under narrowly specified conditions and only for relatively small shortfalls of instructional time, to “waive all or any part of the fiscal penalties that may be prescribed for failing to maintain the prescribed minimum length of time.” *Education Code* Section 46206 effectively allows the State Board to authorize an LEA to make up the time missed in lieu of a monetary payment. In other words, waivers granted under *Education Code* Section 46206 do not retroactively eliminate the legal basis of an audit exception or otherwise exempt the applying LEA from the instructional time offering requirement that it failed to meet. Therefore, these waiver requests continue to be appropriate for consideration by the State Board.

Accordingly, the State Board of Education directs California Department of Education (CDE) staff to return to the submitting LEA any requests to waive retroactively any statute or regulation that is the basis of an apportionment significant audit exception by that LEA. Any waiver request submitted pursuant to *Education Code* Section 46206 shall be presented by CDE staff to the State Board for consideration in keeping with the associated State Board-adopted policy.

California State Board of Education

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